Civil Writ Petition No. 77 (S/B) of 2003.

Pritam Singh Jantwal ……. Petitioner

Versus

Adhishasi Abhiyanta (Nirman Shakha),

U.P. Jal Nigam, Nainital and three others…… Respondents.

……..

Hon'ble P.C.Verma, J.

The petitioner was serving as Chowkidar in U.P. Jal Nigam and has retired on 30.9.1999 from the post of Wrok-Agent. It is not disputed by the respondents that the post is pensionable one.

The only defence taken in the counter affidavit that the petitioner has not completed required length of service for pension. According to the respondents, ten years' regular service is required length of service for payment of pension to a retired servant of the jal Nigam. According to the petitioner, he was regularized on 01.01.1989 and has retired on 30.9.1999. Therefore he has completed ten years' service and ten years' service is qualifying service for payment of pension.

Learned counsel for the respondents submitted that the petitioner was illegally retained in service since 30th Sep., 1997 as the age of superannuation was 58 years and he ought to have been retired on that day.

On the other hand, the learned counsel for the petitioner submitted that the petitioner was serving in a Group-D post. Therefore, his retirement age was 60 years and he was rightly retired on 30.9.1999.

Learned counsel for the respondents submits that vide office memorandum no. C-2-110/Das-534 (19) 57, dated 05.11.1985 it has been provided that those filed workers who have been regularized after 05.11.1985 their age of superannuation will be 58 years. A perusal of the office memorandum makes it clear that it does not classify the Group-D posts as has been classified for purposes of superannuation under the rules framed by the Jal Nigam. The office memorandum has been issued by the Jal Nigam alone while the rules were framed by Jal Nigam after the approval of the State Government. Therefore, the office memorandum cannot over ride the rules. Therefore, I hold that the petitioner was rightly compulsorily retired on superannuation at the age of 60 years on 30.09.1999 and since the petitioner has completed the qualifying service, therefore he is entitled for the pension according to rules of the Jal Nigam.

Therefore, a writ of mandamus is issued to the respondent to pay the pension of the petitioner within a period of one month from the date certified copy of this order. The petition is allowed. No order as to costs.

(P.C. Verma, J.)

21.08.2003

P. Singh